

## REMARKS

Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 4,922,435 to Cahlander et al. (“Cahlander”), in view of U.S. Patent No. 5,630,070 to Dietrich et al. (“Dietrich”) and/or what the examiner has characterized as the Applicants admitted prior art, collectively “the cited art.” By this amendment, claims 1, 7, and 14 are amended for clarity in light of the examiner’s remarks. Support for the amendments to claims 1, 7, and 14 may be found in the specification and claims as originally filed. For example, support may be found at col. 2, lines 50-52, col. 4, line 64 to col. 5, line 2, and FIG. 2. No new matter is added. Therefore, claims 1-22 remain pending and at issue.

### 35 U.S.C. § 103(a) Rejections

The applicants respectfully traverse the rejection of claims 1-22 as obvious over Cahlander in view of Dietrich. Each of claims 1-22 recites *inter alia*, a wasted food registration means. The cited art fails to disclose this feature.

While Cahlander discloses a system for food preparation including a control system that schedules and initiates food preparation activities, Cahlander fails to disclose or suggest any way to account for waste food items. Specifically, the Cahlander device produces food at a frequency based on historical data and real time point of sale data, but does not account for any waste food items (col. 4, lines 31-36).

Fast food restaurants may be regulated through local or state laws that may specify for example, how long a cooked food item, such as french fries or hamburgers, may remain in a queue and available for sale. For example, a hamburger may only be available for sale for 15 minutes after completion of cooking. After such time, the food item must usually be discarded.

Cahlander does not even recognize this problem, let alone a means for solving this problem. On the contrary, the instant application discloses a wasted food registration means (col. 4, lines 65-66) which updates the number of particular food items available for sale when necessary to account for any waste items. Therefore, the claimed system maintains an available quantity of each food item for sale. This available quantity acts as a shock absorber to instantly react to changes in customer

demand. Contrarily, the Cahlander device, because it schedules rates of production, is not able to instantly respond to a change in customer demand, or to waste food items, customer demand must deviate by 20% from forecast for 15 minutes before the Cahlander device modifies the production rate (col. 30, lines 48-51). Thus, Cahlander fails to disclose or suggest a wasted food registration means, as is recited in each of claims 1-22.

Even if, for the sake of argument, one considered the “historical data” used by the Cahlander system to set food production rates as including waste data, such waste data is historical. In this regard, Cahlander teaches away from the system of the instant invention providing accounting of actual waste food items. There is no teaching or suggestion in Cahlander that the considered real time data includes waste food items.

Likewise, Dietrich also fails to disclose a wasted food registration means. The Dietrich device optimizes an output parameter (generally revenue or profit), thus eliminating wasted product. Dietrich discloses optimizing an end or intermediate product given an inventory of raw materials. Therefore, Dietrich, like Cahlander, fails to even recognize a need to account for actual wasted food items, let alone a means for updating a current inventory in view of wasted food items. Dietrich similarly teaches away from a system that incorporates wasted food items accounting by attempting to optimize production to eliminate waste.

Because neither Cahlander nor Dietrich discloses or suggests a wasted food registration means, as is recited by each of claims 1-22, none of claims 1-22 can be rendered obvious by any combination thereof. Accordingly, the applicants respectfully request withdrawal of the rejection of claims 1-22.

Additionally, there is no motivation to combine Cahlander and Dietrich. Cahlander discloses a system that attempts to match a rate of production with a customer demand rate. This is generally known in the supply industry as “just-in-time” supply chain management. Dietrich specifically teaches away from “just-in-time” production. At col. 21, lines 5-22, Dietrich discloses that the Dietrich system is not required if there is an unlimited supply of raw materials, which is what the Cahlander device uses. The Dietrich system is specifically designed to operate to maximize a chosen parameter (profit) given a constrained set of raw materials. Thus, the Dietrich

system "provides methods for determining the best utilization of the available resources," not necessarily a method for managing an inventory of finished products. For this additional reason, claims 1-22 cannot be rendered obvious by any combination of Cahlander and Dietrich.

### **CONCLUSION**

No fees are believed due. However, if there are any additional fees or refunds required, the Commissioner is directed to charge or debit Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP. A copy of this paper is enclosed herewith. The examiner is invited to contact the undersigned attorney at the telephone number listed below in order to discuss any remaining issues or matters of form that will place this case in condition for allowance.

Respectfully submitted,



---

Anthony G. Sitko  
Reg. No. 36,278  
MARSHALL, GERSTEIN & BORUN  
233 S. Wacker Dr.  
6300 Sears Tower  
Chicago, Illinois 60606  
(312) 474-6300

February 14, 2006